

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) IDF 1763 (4000-06600)		RECEIVED CENTRAL FAX CENTER OCT 26 2005	
I hereby certify that this correspondence is being transmitted by facsimile to 571-273-8300 addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on:  on <u>October 26, 2005</u> Signature <u>Karen A. Harris</u>  Typed or printed name <u>Karen A. Harris</u>		Application Number 09/998,419		Filed November 29, 2001	
		First Named Inventor Matthew K. Barrow			
		Art Unit 2143		Examiner Jean Gilles, Jude	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.					
This request is being filed with a notice of appeal.					
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.					
I am the		<u>Albert C. Mettrailer</u> Signature Albert C. Mettrailer Typed or printed name			
<input type="checkbox"/> applicant/inventor.		972/731-2280 Telephone number			
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/98)		10-26-05 Date			
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>27,145</u>					
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____					
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.					
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.					

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

## REMARKS

The appealed Claims 1-18 are listed in the response filed April 12, 2005. These claims are identical to the original claims, except for the substitution of the term "control software file" for "binary files", which terms are defined to be identical in the specification.

The grounds for rejection are stated in the office actions of January 13, 2005 and August 11, 2005 and are essentially identical except for substitution of the term "control software file" for "binary files".

## Claim Rejections – 35 USC 103

Claims 1-18 were finally rejected under 35 USC § 103(a) as being unpatentable over Reichmeyer US Patent 6,286,038 in view of Synnestvedt US Patent 6,598,038.

With reference to claim 1, the Examiner asserts that Reichmeyer disclosed the invention substantially as claimed. In particular, the Examiner asserts that Reichmeyer teaches a method for initializing a customer premises telecommunications hub having a link to a central office (Fig. 3) comprising:

obtaining a configuration file name and a domain name (Col. 6, lines 31-42; Col. 9, lines 15-33) of a TFTP file server (Col. 2, lines 52-58; Col. 3, lines 41-54) from a DHCP server in a central office (Fig. 1, items 10-16; Fig. 3, item 26; Col. 4, lines 4-30), and

obtaining a configuration file, including a first control software file name, from the TFTP file server (Col. 3, lines 41-54) and a model ID identifying the model of the Hub (Col. 8, lines 18-32).

The Applicant disagrees with many of the Examiner's characterizations of the teachings of Reichmeyer. For example, Reichmeyer never mentions a

telecommunications hub or a central office. Reichmeyer never mentions control software or the control software file name. Reichmeyer never teaches any method for locating and downloading control software.

Reichmeyer does not teach obtaining a configuration file name from a DHCP server. Reichmeyer teaches no reason for obtaining a configuration file name. Reichmeyer teaches that the device being configured obtains configuration INFORMATION from a server and then the device constructs its own configuration file, see step 78 in Fig. 4, and Col. 6, lines 39-42. Reichmeyer does not teach obtaining a domain name of a TFTP server from the DHCP server.

Reichmeyer does not teach obtaining a configuration file. Instead it teaches obtaining configuration information and constructing a file in the device being configured. Reichmeyer does not suggest that the information would include a file name for control software. Reichmeyer teaches nothing about downloading control software.

Reichmeyer does not teach obtaining a model ID from the TFTP server. Instead Reichmeyer teaches that the model ID is provided to the server.

The Examiner notes that Reichmeyer does not expressly disclose creating a second control software file name by combining a model ID with at least part of the first binary file name. The Examiner asserts that Synnestvedt teaches "configuration files used to define the equipment's operating mode such as class and type of service, and ...creating additional message log file and a parser that performs the matching and comparing of file name..." Col. 5, lines 10-67. The Examiner then asserts that it would have been obvious to incorporate Synnestvedt's teachings of a second control software file name with the teachings of Reichmeyer, for the purpose of improving the ability of a

network "... to propagate configuration information from the configuration server to the network device...".

Since Reichmeyer does not provide any teaching of any control software file name, it would not be possible to teach creating a second file name and there would be no reason to combine teachings from any reference concerning creating a second file name.

Synnestvedt also provides no teaching concerning control software. As noted by the Examiner, at Col. 5, lines 28-32, Synnestvedt lists various items that may be included in a configuration file. Control software or the name of a control software file does not appear in this list. Since Synnestvedt provides no teachings concerning control software files or file names, it could not provide a teaching concerning creating a second control software file name.

The only teaching Synnestvedt provides about file names concerns the file names for DOCSIS files that are configuration files, not control software files. The teachings concern a comparison of file names to determine if files or requests for files are valid. Synnestvedt does not teach creating new file names by substituting model ID numbers.

From the above remarks, it is clear that there would be no reason to combine the Synnestvedt and Reichmeyer references as suggested and if such combination was attempted, it would not result in the invention as covered by claim 1. Claim 1 is clearly patentable over the cited references. Since claims 2-9 depend from and further limit claim 1, claims 2-9 are also allowable over the cited references.

Claim 10 was rejected over the Reichmeyer and Synnestvedt references on essentially the same basis as claim 1. The Applicant submits that the above remarks

concerning the references clearly demonstrates that claim 10 is allowable over the references. An important distinction is that the references deal entirely with configuration files and provide no teachings of control software files, of downloading control software files, or of providing names of control software files to facilitate downloading such control software files.

Since claims 11-18 depend from and further limit claim 10, the Applicant submits that claims 11-18 are also clearly patentable over the cited references.